



CREATIVE ASSOCIATES INTERNATIONAL^{INC}
CREA Internacional de El Salvador
Proyecto de Participación Ciudadana y Gobernabilidad

Code of Ethics and Office of Government Ethics

**Final Report
July 6-December 31, 2001**

Prepared for:

**United States Agency for International Development (USAID)
El Salvador/SO 2
Cooperative Agreement No. 519-A-00-01-00153**

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Proyecto auspiciado por USAID/El Salvador

TABLE OF CONTENTS

I.	Project Summary	1
II.	Project Accomplishments	2
III.	Summary of Lessons Learned	5
IV.	Recommendations	5
V.	Financial Report	6
Appendix 1: List of Documents Produced under Ethics Code COAG		7
Appendix 2: Newspaper articles related to the Code of Ethics		9

I. Project Summary

This project was formulated in response to the April 14, 2000 Agreement for Anti-Corruption Cooperation between the Department of State (DOS) and the Government of El Salvador (GOES). The DOS, through the Bureau of International Narcotics and Law Enforcement (INL), allocated \$350,000 from agreement for 1) the development of one or more codes of ethical conduct for the GOES and 2) the establishment of an Office of Government Ethics within the GOES.

Although these funds were not made available to CREA until July 6, 2001, CREA had initiated work in this area since its inception in April 2000, through the Citizen Participation and Governance Project funded through Cooperative Agreement No. 519-A-00-00-00041-00. The governmental counterpart for this effort was the National Commission on Sustainable Development (CNDS). In June 2001, two consultants were contracted, following a full and open bidding process, to support the work of the government rapporteur, and important progress was made in the comparative legal research needed to advance in this project and a colloquium with leading legal specialists was held.

With the signing of the Ethics Code cooperative agreement, the costs of the two CNDS consultants as well as that of the government rapporteur, along with all other costs related to this issue, were paid for through this new agreement. Although there was some discussion about the possibility of drafting a code that would be applicable to all government officials, in the end the work was oriented exclusively toward the executive branch.

During the six months of this agreement, all goals within our control were met:

- A participatory process of consultation was supported through four colloquia, in which prominent lawyers, members of civil society and government officials discussed the merits of each of the proposed documents. These discussions were transcribed and then reviewed by the consultants, and suggestions were incorporated into documents as warranted.
- Draft documents were elaborated and finalized through this process, requiring only Executive action, including the following:
 - Executive decree—Code of Ethics for Public Functionaries
 - Executive decree—Ethics Commission for Public Functionaries
 - Expository preamble (*exposición de motivos*)—Code of Ethics for Public Functionaries
- In addition, the CNDS consultants drafted a proposed inter-institutional agreement between the Attorney General's Office and the Ethics Commission
- Studies reviewing ethics provisions in Salvadoran legislation, as well as in comparative law, were produced in order to inform the development of the code.
- Computer and office equipment was purchased for the Ethics Commission, and deposited with USAID until the formal opening of this office.

In the first months of 2002, the executive decrees that would create both the Ethics Code or the Ethics Commission had not yet been signed by the President of the Republic.

II. Project Accomplishments

As mentioned in the summary, the goals which this project set out to achieve—and which were within the parameters of its control—were in fact accomplished.¹

Most importantly, the Ethics Code and Ethics Commission will provide new legal and administrative mechanisms for controlling public acts of corruption, while involving citizens to a degree not previously done. The following chart provides a review of the potential benefits of this project, once they are finally implemented by the Executive branch.

<i>Previous Status of Ethics for Public Servants</i>	<i>Changes that would come about with the implementation of an Ethics Code and Office of Government Ethics</i>
There is no single body of norms or regulations that regulate the behavior of servants and public functionaries. In addition, there are few and rarely implemented sanctions or penalties for violations of ethical rules.	The Ethics Code and Ethics Commission will provide norms and procedures for dealing with ethical issues for all Executive branch employees. In addition, sanctions and penalties are more clearly defined and thus more readily applicable.
Before the information about laws related to ethics was not systematized and coordinated in one place.	A thorough review of ethics rules that currently exist in Salvadoran and international bodies of law
Before citizens have less clarity about where and how to denounce perceived ethical violations.	The Ethics Commission will receive and attend to denunciations by the average citizen.
Before there has not existed any mechanism for follow-up to the Inter-American Anti-Corruption Convention, even though it was ratified by the Legislative Assembly in 1998.	The Ethics Code, which takes its inspiration from the Inter-American Anti-Corruption Convention, will become a mechanism for application of, and follow-up to, this Convention.
Before there has not existed any norm or mechanism for the protection of someone who wishes to denounce any particular act of corruption.	The Code of Ethics establishes a norm for the protection of those that place denunciations with the Commission.
Before there was no systematic revision of the Penal Code with respect to provisions related to corruption.	The Ethics Code dedicates a chapter to the Penal Code, indicating areas that are relevant to acts of corruption.

¹ The program description that formed part of the cooperative agreement indicated that CREA would be responsible for the “establishment of an office of government ethics within the GOES.” Ultimately, however, the decision to establish such an office resides in the executive branch.

Before there were few norms or mechanisms for citizen participation in combating corruption.	The Ethics Code has an entire chapter devoted to citizen collaboration in the prevention of corruption, through a series of mechanisms.
Before there has been only a limited vision of the problem of corruption in the Executive branch, and solutions for such problems.	The Ethics Code establishes a set of norms, as well as preventative and educational mechanisms, such as citizen access to public information, the publicizing acts of corruption, and citizen participation in the control of public administration.

In addition to these potential benefits, the following chronology of activities and documents produced will illustrate the level of effort involved during the short life of this agreement:

July 2001 Consultants worked on a methodological framework for their research, which sought to review Salvadoran and Latin American legislation related to ethics.

August 2001 Consultants finalized the following reports:

- Report on ethics issues found in Salvadoran penal legislation
- Report on ethics issues found in Salvadoran civil, labor, tax and municipal legislation
- Report on ethics issues found in Salvadoran administrative law
- Report on ethics issues found in constitutional law in Latin America
- Comparative study of constitutional norms related to anti-ethical behavior of public servants
- Report on legislation in Latin America related to the responsibilities of public servants

New government rapporteur, Dr. José Enrique Silva, contracted full-time in late August.

September 2001 Draft law of a legislative decree for the Ethics Code and the creation of the Office Ethics for Public Functionaries produced and discussed in a colloquium held on Sept. 18

October 2001 Drafting of the expository preamble (*exposición de motivos*) for the legislative decrees
Preparation for, and presentation of, a colloquium October 25, in which the Office of Governmental Ethics was discussed. In this meeting, the idea was put forward that the Code and Office should be preventative and educational in nature, and less punitive. In addition, it was suggested that this only cover the

executive branch, and that the members of the Office (now referred to as an Ethics Commission) include only members of the executive.

November 2001

Documents regarding the Ethics Code and Ethics Commission were redrafted as executive decrees, and a final colloquium was held on November 29 to review and approve the final form and content of these drafts. The USAID Mission Director attended this final meeting.

December 2001

- Draft inter-institutional agreement between the Attorney General's Office and the Ethics Commission was prepared.
- Final reports and documents prepared and submitted by CNDS to CREA and USAID.
- Computer and office equipment for the future Ethics Commission purchased (see list in Part 2, Financial Status), and warehoused at USAID.
- Intranet computer system designed for use by Ethics Commission

III. Summary of Lessons Learned

- Given that this was a new thematic area for the government, government counterparts—and especially the consultants contracted—were often open to suggestions as to content and directions to be taken in the development of the code and office of ethics, particularly with respect to mechanisms for information access and citizen participation.
- Although the Executive branch displayed the initial political will necessary for the realization of the project, the failure to implement the code and office of ethics before the project's conclusion, or even shortly thereafter, slowed the momentum of the process. It also may suggest a reconsideration as to whether or not the political will exists to carry this project any further.
- Many parts of the process could have been more participatory and open to the public. Although some participation occurred, it was not always consistent—i.e., the same group of persons were not always involved—and it was perhaps not sufficiently broad as to have generated a base of support for carrying out the code. Although public statements of commitment were made to this process, the public release of different documents would have both indicated a real openness to seeing this process succeed, as well as created a more informed group of persons and organizations who could push for the approval and implementation of the code and office of ethics.

IV. Recommendations

- Once the code and office of ethics are approved and operating, CREA/USAID should be willing to offer further technical support, especially with respect to the training of new personnel for the office.

V. Financial Report

The entire amount of the \$350,00 allocated to this project was spent. Further financial details are provided in the pages that follow, but apart from direct expenses by CREA for personnel and other administrative costs, the expenditures can be summarized as follows:

Consultant costs	\$53,931.15
Colloquia and conferences	\$10,300.54
Computer and office equipment for the Ethics Commission	\$166,285.73

LISTA FINAL DE COMPRAS PARA CNDs AL 31 DE DIC 01

ACTUALIZADO 7/1/02

O/C NO.	CATEGORIA (1)	PROVEEDOR	ARTICULOS	GASTO REAL
02/01	10	Grupo Q	Vehículos	28,000.00
03/01	6	Data & Graphics	Cañon	6,075.00
04/01	9	Ensambladora Salvadoreña	Motocicleta	2,628.57
04-A/01	9	Ensambladora Salvadoreña	Casco y Trámite de placa	137.53
05/01	8	Lanier	Fotocopiadora	3,509.00
06-01	4	Freund, S. A.	Aspiradora	105.66
07-01	4	Atlantisa	Cafetera	42.86
08-01	4	La Curacao	Horno Microondas	148.46
09-01	4	Prado	Oasis, Refri, TV, VHS	1,568.91
10-01	3	Office	Contómetro, Fax	377.58
11-01	3	Data & Graphics	Destructor de papel, Maquina de escribir, Retroproyector	1,895.00
12-01/26 ^{ca}	3	American Office	Sacapuntas eléctrico	85.88
13-01	3	Radio Shack	Grabadora	407.96
14-01	2	Data & Graphics	Anilladora	485.00
15-01	2	Librería Universal	Artículos de Oficina	261.70
16-01	2	Librería Siglo XXI	Artículos de Oficina	691.24
17-01	2	Office	Artículos de Oficina	473.64
18-01	2	Freund, S. A.	Relojes de pared	55.50
19-01	5	Ferrocetro	Muebles de Oficina	14,933.25
20-01	5	Imperio Metal	Archivadores y mesas circulares	1,823.18
21-01	5	Muebles Sandra	Pizarras de plumón y corcho	191.00
22-01	1	Pap.y Lib.Universal	Papelería	3,108.09
23-01	1	Librería Siglo XXI	Papelería	1,911.78
24-01	13	C&C	Compra de servidor, PCSs y software	45,321.00

LISTA FINAL DE COMPRAS PARA CNDS AL 31 DE DIC 01

ACTUALIZADO 7/1/02

O/C NO.	CATEGORIA (I)	PROVEEDOR	ARTICULOS	GASTO REAL
25-01	13	Data & Graphics	Impresoras laser	3,997.84
26-01	1	American Office	Papelería	137.58
27-01	13	Equipos Electrónicos Váldez	Impresor ink jet, computadora portátil, jazz drive, web cam y concentrador	4,565.09
27-01	7	Internet	Cámara digital	457.79
S/N	12	Freund	Accesorios de cocina- compra directa	167.62
S/N	12	Europa	Accesorios de cocina- compra directa	14.70
28-01 con 24/02	13	C&C	Scanner, cd writer, cd's y cintas para backs ups	706.50
29-01	13	Equipos E. Valdez	Insumos	1,832.92
30-01	13	Data & Graphics	Toner para imp. laser	678.00
31-01	14	SIGNO	Red telefónica aproximadamente	2,325.93
SUB-TOTAL				129,121.76
34-01	1-A	Imprenta Offset Villegas	Juegos de pastas impresas Full color en folcote 14	4,000.00
36-01	3-A	Data Graphics	Proyector Multimedia Epson EMP-50	2,836.71
38-01	13-A	Sistemas C&C	Computadora Compaq EVOD 300 Quemador externo HP8230E Licencias OEM (Office XP Pro)	3,882.00
39-01	13-B	Data & Graphics	Impresores HP modelo 960C de Inyección	670.84
41-01	3-B	General Center	Aire Acondicionado mini split de 12,000 BTU Confort Maker	3,992.00
42-01	10-A	General De Vehículos	Vehículo Ford Focus SE	17,885.71

LISTA FINAL DE COMPRAS PARA CNDS AL 31 DE DIC 01

ACTUALIZADO 7/1/02

O/C NO.	CATEGORIA (1)	PROVEEDOR	ARTICULOS	GASTO REAL
S/N	13-C	C&C	Software Antivirus 2 Value License, Value Upgrades	168.00
S/N	3-D	Mike Mike	Carterónes	63.54
SUB-TOTAL				33,498.80
				162,620.56
S/N	10-B	SISA	Seguros vehículos (3)	2,733.29
S/N	9-A	SISA	Seguro moto	160.61
SUB-TOTAL				2,893.90
TOTAL				\$165,514.46

Appendix 1: List of Documents Produced under Ethics Code COAG (available upon request from CREA)

1. **Coloquio Código de Ética.** CNDS. Hotel Princess. 8 de Mayo de 2001
2. **Informe de Avance de Actividades de la Consultoría Jurídica.** Proyecto Código de Ética. *Ángel Arturo Soto*. 24 de Julio 2001
3. **Primer Informe sobre Estudio del tema de Ética en la Legislación Penal Salvadoreña.** Correspondiente al marco de programas de actividades para la formulación del Código de Ética y establecimiento de la Oficina de Ética Gubernamental. *Mauro Arturo Vásquez*. Junio de 2001
4. **Segundo Informe** que corresponden al marco de programas de actividades para la formulación del Código de Ética y establecimiento de la Oficina de Ética Gubernamental. *Mauro Arturo Vásquez*. Agosto 2001
5. **Marco Metodológico: Documento Base para Formulación del Código de Ética. Borrador** sujeto a revisión 09/08/01. Proyecto Código de Ética. *Arturo Soto*.
6. **Borrador del Proyecto de Ley. Código de Ética de la Función Pública.** CNDS. Vicepresidencia de la República. Octubre de 2001
7. **CD “Código y Oficina de Ética para la Función Pública”.** Vicepresidencia de la República. Consejo Nacional para el Desarrollo Sostenible.
 - Logo del Código de Ética
 - Logo de la Oficina de Ética para la Gestión Pública
 - Logo de Transparencia
 - Presentación del Índice del Código de Ética
 - Presentación del Código de Ética
8. ***Tríptico “Elaboración del Código de Ética y Establecimiento de la Oficina de Ética Gubernamental”.***
9. **Transcripción IV Coloquio Código de Ética,** Proyecto “Código de Ética para la Función Pública”. San Salvador, 29 de Noviembre de 2001
10. **Proyecto “Código de Ética para la Función Pública”. Informe Final. Tomo 1.** Diciembre de 2001
 - Antecedentes
 - Metodología de la Investigación
 - Estudio de la Ética en la Legislación Salvadoreña y en el Derecho Comparado.
11. **Proyecto “Código de Ética para la Función Pública”. Informe Final. Tomo 2.** Diciembre de 2001

- De los Proyectos de los Decretos Ejecutivos sobre la creación de la Comisión y del Código de Ética para la Función Pública
 - Anexos
- 12. Informe Final de Consultoría de los Decretos Ejecutivos: Creación de la Comisión de Ética para la Función Pública.** Proyecto: Código de Ética para la Función Pública. Diciembre del 2001.
- 13. Informe Final de Consultoría de los Decretos Ejecutivos: El Código de Ética para la Función Pública.** Proyecto: Código de Ética para la Función Pública. Diciembre del 2001.
- 14. Informe Final de Consultoría: Exposición de Motivos.** Proyecto: Código de Ética para la Función Pública. Diciembre del 2001.
- 15. Informe Final de Consultoría: Convenio Interinstitucional entre la Comisión de Ética para la Función Pública y la Fiscalía General de la República.** Proyecto: Código de Ética para la Función Pública. Diciembre del 2001.
- 16. Informe Final de Consultoría.** Proyecto: Código de Ética para la Función Pública. Diciembre del 2001.
- 17. Diagnóstico y Diseño de Red.** Oficina de Ética Pública. Marco V. Reinoso
- 18. Documentos**
- Decreto Ejecutivo para la creación de la Comisión de Ética para la Función Pública
 - Exposición de Motivos. Código de Ética para la Función Pública
 - Proyecto de Decreto de Creación del Código de Ética para la Función Pública
- 19. Compromisos Internacionales adquiridos por El Salvador en la lucha contra la corrupción. Proyecto: Código de Ética para la Función Pública.**
- Primera Cumbre de las Américas
 - Tratado Marco de Seguridad Democrática en Centroamérica
 - Segunda Cumbre de las Américas
 - Convenio de Cooperación Anti Corrupción
 - Declaración de la Ciudad de Québec
 - Documento de Buenos Aires
 - Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción
 - XV Cumbre Presidencial del Grupo Río
 - XI Cumbre Iberoamericana de Jefes de Estado y de Gobierno. Declaración de Lima.

Appendix 2: Newspaper articles related to the Code of Ethics

“Política con Honradez”. Editorial de La Prensa Gráfica. 15 de marzo de 2001.

“Frenarán viajes y regalías a funcionarios públicos”. Noticia. Diario El Mundo. 17 de abril de 2001.

“Se tendrá el poder de aplicar sanciones”: Quintanilla. Entrevista realizada por el Diario El Mundo. 17 de Abril de 2001.

“La lucha contra la corrupción es de todos”. Editorial de Diario El Mundo. 19 de abril de 2001.

“Se requieren otras sanciones para la corrupción”. Editorial de Diario El Mundo. 19 de abril de 2001

“Corrupción: Deterioro de la moral social”. Centro de Estudios Jurídicos. La Prensa Gráfica. 21 de mayo de 2001.

“Sobre cambios y ética pública”. Editorial de La Prensa Gráfica. Jueves 24 de mayo de 2001.

¿Está creciendo la corrupción en El Salvador? Linda Hemby. La Prensa Gráfica. 10 de Julio de 2001.

“Ética y Gestión Pública”. Editorial de La Prensa Gráfica. 23 de Octubre de 2001.

“Ética y Política: En torno a la corrupción”. Editorial de CoLatino. 25 de octubre de 2001.

“El cáncer de la corrupción”. Editorial de La Prensa Gráfica. 26 de noviembre de 2001.

“La transparencia en el Gobierno se tiene que demostrar”. Centro de Estudios Jurídicos. La Prensa Gráfica. 7 de Enero de 2002.

“Un Código de ética para los servidores públicos”. Ricardo Córdova Macías. La Prensa Gráfica. 2 de marzo de 2002.

“Piden ampliar combate a la corrupción”. Nacionales de El Diario de Hoy. 2 de abril de 2002.

“Ética Política”. Ricardo Salvador Murcia Recinos. El Diario de Hoy. 11 de abril de 2002.